AHMAD B. HJ HASSAN & 10 ORS.

v.

MAJLIS AMANAH RA'AYAT (MARA)

HIGH COURT, ALOR SETAR
DATO' K.C. VOHRAH J.
[CIVIL SUIT NO. 163 OF 1983]
29 AUGUST 1992

CONTRACT: Employment - Pension - Whether plaintiffs eligible - Whether employees on permanent establishment - Service Circular 2 & 9 of 1975 - Whether either applicable - Extension of privileges - Effect of Harun Report - Recommendation - Effect.

The plaintiffs were employees of the defendant (MARA), a statutory authority established by the Majlis Amanah Ra'ayat Act, 1966. They claimed that they had become employees on the permanent establishment of the defendant and that they were eligible for pension. They prayed for a declaration that they were on the permanent staff of the defendant and that they were entitled to pensions on retirement under Service Circular No. 2 of 1975, alternatively, or as recommended by Harun's Report. They also contended that they were so entitled under Service Circular No. 9, on their opting for new salaries, on the ground that they had been extended privileges meant only for permanent employees.

The defendant claimed that originally the plaintiffs were employed as 'casual' or 'temporary workers' for their Bus Project (the project), and subsequently accepted as their employees as contract staff, and did not become employees on their permanent establishment, and therefore were not eligible for the pension. They denied that Circular 2 of 1975 or other circulars changed the status of the plaintiffs.

Held:

[1] The plaintiffs were not eligible for any pension, there was no pension. There was no evidence to show that the plaintiffs were placed on the permanent establishment of the defendant. The onus was on the plaintiffs to prove that the said circulars gave them permanent and pensionable status, and this they had failed to do.

The plaintiffs were originally either casual employees or employees of one of the projects, the Project run by defendant before the issue by the defendant of Circular 2 of 1975.

[2] Service Circular No. 2 of 1975 did not apply automatically to the plaintiffs when it was issued. Whether an employee was put on the permanent and pensionable establishment depended on the employee's status prior to the coming into force of the circular, whether he was a permanent or temporary or daily rated employee. Furthermore, though Circular 2 was applicable to employees of the defendant, the plaintiffs were employees of the Project at and before the issue of the Circular 2.

[3] Neither did Circular 9 confer on the plaintiffs the status of permanent employees, though the plaintiffs had opted for new salaries as provided by Circular 9. The plaintiffs were treated as contract employees. They were not recognised as permanent employees by the defendant.

[4] The extension to the plaintiffs of the privileges meant only for permanent employees did not mean that the plaintiffs thereby were to be considered as permanent employees.

[5] Though the Harun Report had made recommendations that the plaintiffs be placed on pensionable establishment, this had not been acepted by the defendant.

[Claim dismissed with costs.]

Legislation referred to:
Majlis Amanah Ra'ayat Act 1966, s. 40
Rural and Industrial Development Authority Ordinance 1953

For the plaintiffs - Wan Mustapha b. Hj. Ali; M/s. Adhan & Mustapha
For the defendant - Varghese George; M/s. Zain & Co.

JUDGMENT

K.C. Vohrah J:
The defendant (MARA) is a statutory authority established by the Majlis Amanah Ra'ayat Act 1966.

The plaintiffs say that they became employees on the permanent establishment of the defendant and that they are eligible for pension. The defendant denies this. The defendant says the plaintiffs were originally "causal" or "temporary workers" employed in one of the defendant's projects and that subsequently they were accepted as the defendant's employees as contract staff; that they did not become employees on the defendant's permanent establishment and are there-

fore not eligible for pension.

Plaintiffs' prayers

The plaintiffs pray for a declaration that they "are on permanent establishment" and that "they are entitled to pension under Service Circular No. 2 of 1975." Alternately they pray for a declaration "that they are entitled to pensions on retirement as recommended by Harun's Report."

The plaintiffs base their claim principally on one of the defendant's service circulars to its staff, Service Circular 2 of 1975 (see agreed document D2 pp. 1 to 33 - Bahasa Malaysia version; pp. 34 to 63 - English version; as applied by the defendant to its employees). This came in the wake of the release of what is commonly called the "Harun Report" (a report of "The Royal Commission on the Renumerations and Conditions of Service in Statutory Authorities and Local Authorities" under the Chairmanship of Mr. Justice Harun) and the "Revised Recommendations and Observations of the Royal Commission on the Remunerations and Conditions of Service in Statutory Authorities and Local Authorities on the Comments of Employees on the Report on Statutory Authorities" (see p. 5).

The plaintiffs in para 5 of their statement of claim say that under Service Circular 2 of 1975 the plaintiffs "were permanent employees and should be eligible for emplacement on the pensionable establishment on completion of 10 years' service."

Under para 8 of the statement of claim reliance is placed alternatively on Service Circular 9 of 1975 (see agreed document D2, pp. 64 to 72). The plaintiffs plead that it is stated in that circular that the Government of Malaysia and the defendant had agreed that employees under contract not mentioned in Circular 2 of 1975 "should be given election and be converted to the New Salaries."

Further, the plaintiffs rely, as shown in para 9 of the statement of claim, on MARA Service Circular 16 of 1975 entitled "Perkhidmatan Kakitangan Project Bahagian Kenderaan MARA" (see agreed document D2, pp. 73 to 74) issued by the defendant which they say confirmed that the plaintiffs were eligible for the new salary scheme.

The defendant however denies that Circular 2 of 1975 or that the other circulars changed the status of the plaintiffs to permanent employees or made them eligible for pension.

Issue

The issue thus is whether the plaintiffs became employees on the permanent establishment of the defendant and therefore became entitled to pension on their retirement under the defendant's Service Circular 2 of 1975 or any other circular. The onus is on the plaintiffs to prove that the said Circulars gave them such status, that is,

1. that they became permanent employees contractually or by force of law; and
2. that if they became permanent employees they are eligible for pension.

Appointment of plaintiffs as causal or temporary employees in project run by RIDA and MARA:

Before MARA was established there was a statutory authority known as the Rural and Industrial Development Authority (RIDA) established under the Rural and Industrial Development Authority Ordinance 1953. The powers, right, privileges, duties, liabilities or obligations of RIDA, however, devolved on MARA under the Majlis Amanah Ra'ayat Act 1966 under s. 40.

RIDA ran a project known as "Kenderaan Bas RIDA KEDAH" and this project was taken over by MARA and became known as "Kenderaan Bas MARA Kedah" (the Project), a venture to carry out bus services for the rural population, the objective being to encourage bumiputras to participate in transport services.

All 11 plaintiffs became employees between the period 6 January 1964 and 10 March 1967, either in the project run by RIDA or subsequently, in the project run by RIDA's successor, MARA, the defendant, and from their letters of appointment (see Agreed Bundle D1) it cannot be disputed that the plaintiffs were either causal employees (the 9th and 10th plaintiffs) or temporary employees (rest of the plaintiffs) of the Bus Project taken over by the defendant before the issue by the defendant of Circular 2 of 1975 in 1975.

Circular 2 of 1975 and other circulars

As pointed out earlier, at and before the issue of Circular 2 of 1975 (see the plaintiffs' letters of appointment in Agreed Bundle D1) the plaintiffs were not employees of the defendant; they were employees of the Project run by the defendant. Circular 2 of 1975 consequently did not apply to the plaintiffs.

PW4, the President of the Persatuan Pekerja-pekerja Pengangkutan MARA Malaysia Barat (the Union), said that to his knowledge when the defendant took over the administration of RIDA the plaintiffs were considered as the defendant's staff and that the decision was made by the Attorney General and not by the defendant. There is no evidence to show that and I find it hard to believe. A look at the MARA Service Circular 16 of 1976 shows that it was issued specifically for employees of the Project; recognition was given by the defendant that they were contract employees of the defendant. The evidence of DW1, the former Pegawai Penolong Tadbir Tertinggi at the Transport Division of the defendant for 15 years since 1975 and who was familiar with the claims of the plaintiffs, and his evidence is more probable, was that the plaintiffs were not employees of the defendant and Service Circular 2 of 1975 did not apply to them when it was issued. Then Service Circular 9 of 1975 was issued by the defendant in respect of its contract employees and was based on a circular issued by the Jabatan Perkhidmatan Awam (the Public Services Department) and made especially for contract employees in all statutory bodies. He said this circular was issued to all Project staff because the Council of the defendant had termed them as contract workers. And he said under Circular 9 of 1975 all applicable persons including staff of the Project who were temporary or causal workers under their original appointment papers were given option papers to sign in order to opt for new salaries and the plaintiffs signed their option papers. His point was that the plaintiffs opted for new salaries but neither Service Circular 2 of 1975 nor any other service circular conferred upon them the status of permanent employees; they were treated as contract employees.

In Service Circular 2 of 1975 of the defendant the salary scales and terms and conditions of service of employees in Divisions I, II, III and IV and those of the Industrial and Manual Group or the equivalent in the defendant's establishment were revised in accordance with the terms set out therein. There is nothing in the Circular which gave an automatic right to any employee who opted for the salaries to be put on the permanent and pensionable establishment. It depended on the employee's status prior to the coming into force of the circular whether he was a permanent or temporary employee or daily rated employee (see para 144 of circular). There is also nothing in Service Circular 9 of 1975 which even hints that permanent status would be accorded to contract employees who opted for the new salaries.

What then was the evidence of the plaintiffs in regard to Service Circular 2 of 1975 or of 9 of 1975 or of MARA Service Circular 16 of 1976 in regard to their claim that they were on the permanent establishment? There was regretfully none.

The 1st plaintiff (PW3), the second plaintiff (PW1) and the fourth plaintiff (PW2) gave evidence as to how they first came to be employed as either causal or temporary drivers in the venture by RIDA or by the defendant and how eventually they got wages "paid according to Harun Report". But none of them could show any evidence that they had been placed on the permanent establishment or that they were entitled to pension. PW1 admitted he had no document which stated that his status had been changed from a temporary employee to a permanent employee. He said, "Our understanding was that we are to receive pension. We were told by the association (that is, the Union) we would be getting pension". Under cross-examination he stated that it was his understanding that because of the Harun Report and of the salary changes there was a change of his status from temporary employee to permanent employee. In regard to PW2, he was not aware of Circular 2 of 1975 but he disagreed he was a contract employee. He said he claimed pension on the advice of the Association (the Union) and that the claim was based on the Harun Report. He also said there was no letter to him stating he had been put on permanent status but since he was working for more than 20 years he should be put on permanent status. PW3 on the other hand said he presumed he would get a pension as the matter was claimed by his union and the union had been successful in resolving the issue of daily wages to monthly wages.

We come now to the evidence of the president of the Union, PW4. He could not show any provision in Circular 2 of 1975 which made all employees of the defendant permanent employees. Needless to say there is indeed nothing in the Circular which can be construed as doing that.

The evidence of PW4 in fact shows that the defendant had not agreed to recognise the plaintiffs as permanent employees of the defendant and that in spite of several meetings between the Union and representatives of the defendant, even as late as two meetings in 1990, the defendant had not accepted the plaintiffs as permanent employees.

It is instructive to set out what PW4 said at one stage of his evidence,

> The implementation of the Harun scheme was on 15 November 1975 if I am not mistaken. But the scheme was accepted for transport workers in 1976. In 1975 MARA did not want to implement it; they delayed it until 1976. We had several negotiations with MARA until a certain date when we took industrial action, picket. Then subsequent to that MARA called us and promised to implement the Commission report. So MARA paid on 1976. Increments they paid. **They still failed to recognise the status of the workers as permanent workers.**
>
> (emphasis mine)

PW4 mentioned that the Union wrote several letters to the defendant and that the Union had several discussions with MARA. The Court asked him whether there was any promise or letter from the defendant or the Chairman of the defendant that the plaintiffs would be placed on the permanent establishment and he replied,

> At the meeting of 21 February 1976 we discussed with the Chairman, and he took note. In the meeting the Chairman said he would take note and endeavour to resolve the issue. He did not say he was going to make them permanent. Apart from that there was nothing from MARA or the Chairman except for subsequent meetings. In my view the cabinet agreed and (then there was) the Harun report - under (the Cabinet agreement and the Harun report) they should have been placed on permanent basis.

Finally in regard to the last two meetings on 4 June 1990 and 10 September 1990 between the Union and representatives of the defendant PW4 agreed that at these two meetings it was explained to the Union that there is no establishment post in Bahagian Kenderaan MARA to qualify for pension and PW4 also added,

> The question of establishment post was not accepted by MARA right from the beginning and MARA did not recommend it to Jabatan Perkhidmatan Awam. That is why the matter had to be discussed.

There was absolutely no evidence adduced to show that the plaintiffs were placed on the permanent establishment of the defendant.

Privileges extended to the plaintiffs

Implicit in the evidence of PW1, PW2 and PW4 was the argument that because certain privileges were extended to the plaintiffs after the issue of Circular 2 of 1975 and since these privileges were meant only for permanent employees, therefore, the plaintiffs were permanent employees. Among the privileges mentioned were longer vacation leave, free medical treatment, car or motor cycle loans and pilgrimage leave. Vacation leave is provided under para 47 of Circular 2 of 1975, medical benefits under para 128, loans for vehicle under para 133, and these among many other privileges are, however, accorded to all employees whether permanent and pensionable or temporary and non pensionable staff. Pilgrimage leave under para 67 of Circular 2 of 1975 was limited to Muslim employees who are pensionable. DW1 said, however, that in 1985, this privilege was extended to contract officers based upon a direction from the Jabatan Perkhidmatan Awam (see D6). Thus the reliance of the plaintiffs on these privileges accorded to them as advancing their case that they are permanent employees is misconceived.

Finally the plaintiffs say since "The Harun Report" recommended that the plaintiffs be placed on the pensionable establishment therefore they should so be placed. The Commission did make revised recommendations and observations (see p.5) and one of the recommendations was for casual workers to be considered as permanent employees. The recommendation, clearly, was not accepted and remains a recommendation and nothing more.

From the foregoing it can be seen that the plaintiffs have not shown anything whatsoever on which they can rely to show that they became

permanent and pensionable employees of the defendant. The plaintiffs have relied on surmises and on expectation without any tangible legal foundation for their claim. And they also relied on what the Union felt they ought to get. I feel sorry that they should have at all brought this misconceived claim.

The plaintiffs' claim is dismissed with costs.